

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ADAM JACOBELLI, by and through)	
his parents, MR. JAMES JACOBELLI)	
and MRS. CAROL JACOBELLI,)	
)	CIVIL ACTION NO. 02-0884
Plaintiffs,)	
)	
vs.)	
)	
NORWIN AREA SCHOOL DISTRICT,)	
)	
Defendants.)	

MOTION TO SETTLE AND COMPROMISE A MINOR'S CLAIM

AND NOW COME, the Plaintiffs, Adam Jacobelli, James Jacobelli and Carol Jacobelli by and through their attorneys, Charles W. Jelley, Esq., and Tremba Jelley & Whelton, LLC, and file this Motion, pursuant to L.R.17.1 to Settle and Compromise all Claims and to Approve Distribution of Settlement Proceeds, after expenses, into a Court Approved Special Needs Trust for Adam Jacobelli, and in support thereof, states as follows:

1. This action was brought by the Plaintiffs, Adam Jacobelli, James Jacobelli and Carol Jacobelli, (hereinafter "Plaintiffs") to recover for personal injuries suffered as a consequence of alleged acts of discrimination, the denial of a Full Educational Opportunity Goal (hereinafter "FEOG"), the denial of a Free, Appropriate Public Education (hereinafter "FAPE"), pursuant to the Individuals with Disabilities Education Act, (hereinafter "IDEA"), as amended (20 U.S.C. §1401 et. seq.),

and its implementing regulations; Section 504 of the Rehabilitation Act of 1973, (hereinafter "Section 504"), as amended (29 U.S.C. §794), and its implementing regulations; the Americans with Disabilities Act of 1990, (hereinafter "ADA"), as amended (42 U.S.C. §12101 et. seq.), and its implementing regulations; and the Civil Rights Act, (hereinafter "Act"), as amended (42 U.S.C. §1983, §1985, §1988).

2. Personal Injury Damages alleged to be suffered by Adam Jacobelli include, but are not limited to, loss of skills, regression, loss of the chance to receive benefits from participation in programs sponsored by the Norwin Area School District, (hereinafter "Defendant"), pursuant to the IDEA, Section 504, the ADA, and severe emotional distress. The above tort damages also arise out of a dispute concerning the provision of Adam's FAPE and FEOG, pursuant to the IDEA, Section 504 and the ADA, from 1999 and continuing through the present. Plaintiffs allege that during Adam Jacobelli's education, at various times, he was denied equal access and use of Defendant's programs, benefits, and services, and therefore denied FAPE, FEOG, regular education, special education, compensatory education services, auxiliary aids, and related services necessary to provide Adam with FAPE, and an equal opportunity to receive FEOG.

3. Authorized representatives of the Defendant have offered to settle the above claims and damages suffered as an alleged consequence of the denial of FAPE, pursuant to the IDEA, Section 504, the ADA, including, but not limited to claims for compensatory damages, the equitable remedies of compensatory education, regular education, related services, legal fees, tuition reimbursement, and reimbursement to the Parents' for out-of-pocket expenses in a Lump Sum Settlement in the amount of \$150,000.00, payable to Tremba Jelley & Whelton Escrow Account.

4. Plaintiffs respectfully request that this Court approve that payment of the settlement proceeds due to Adam Jacobelli be paid into a Special Needs Trust.

5. The settlement proceeds in the amount of \$150,000.00 shall be disbursed as follows:

- a. The sum of \$52,000.00 shall be placed into a Special Needs Trust on behalf of Adam Jacobelli;
- b. The sum of \$23,000.00 shall be paid to James and Carol Jacobelli as reimbursement for tutoring expenses, attorneys' fees, costs, expert witness fees, and out-of-pocket litigation expenses incurred while providing and ensuring that Adam Jacobelli received FAPE, pursuant to the IDEA, Section 504, and the ADA. The Plaintiffs', James Jacobelli and Carol Jacobelli, believe the proposed Compensatory Education Lump Sum

Settlement to be fair and reasonable. The Plaintiffs', James Jacobelli and Carol Jacobelli, believe said Compensatory Education Lump Sum Settlement shall also settle any and all claims the Plaintiffs may have in their own right; and

c. The amount of \$75,000.00 as attorneys' fees and costs shall be payable to Tremba Jelley & Whelton, LLC. (A copy of the Affidavit of Plaintiffs' attorney is attached hereto as Exhibit "A" and is incorporated by reference as though fully set forth at length).

7. The Plaintiffs wish to accept this Settlement Offer, and have the proceeds disbursed as stated in this Motion and attached Order, believing the same to be fair and reasonable.

8. Pursuant to the Omnibus Budget Recollection Act, set forth at 42 U.S.C.A. §1396 p(d) (4) (a), as amended and 55 Pa. Code §178.7(f) (1), the sole amount of \$52,000.00 shall be placed into the "ADAM JACOBELLI SPECIAL NEEDS TRUST." Plaintiff, Adam Jacobelli, through his Parents, believes that this Settlement and Compromise of their tort-like claims for discrimination, denial of FAPE, denial of FEOG including, educational injuries and personal injury is fair and reasonable. The Principal of the Special Needs Trust shall be used to supplement, and not supplant, other available benefits, which Adam Jacobelli may be entitled to receive. The Parents, James and Carol Jacobelli,

shall serve as Co-trustees of the "ADAM JACOBELLI SPECIAL NEEDS TRUST." (A copy of Adam Jacobelli's Special Needs Trust is attached hereto as Exhibit "B" and is incorporated by reference herein as though fully set forth at length).

9. This Compromise and Settlement will release the Defendant, Norwin Area School District, and all persons against whom the Plaintiffs have any and all claims arising out of the actions referenced herein.

10. The Parents, James and Carol Jacobelli, and the Law Firm of Tremba Jelley & Whelton believe that this Settlement and Compromise is fair and reasonable and now recommends its acceptance to this Honorable Court.

11. Counsel for the Defendant has reviewed, agrees to said Settlement and Compromise, and does not oppose the within Motion, or the creation of the Special Needs Trust.

WHEREFORE, Plaintiffs request this Court approve the Compromise and Settlement, as set forth in the proposed Order of Court, and the creation of the "ADAM JACOBELLI SPECIAL NEEDS TRUST."

Respectfully submitted,

TREMBA JELLEY WHELTON, LLC

Date: _____

By: /s/ Charles W. Jelley
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CERTIFICATE OF SERVICE

I hereby certify that the within Motion to Settle and Compromise a Minor's Claim and to Approve Establishment of a Special Needs Trust for Adam Jacobelli was served via Electronic filing, addressed as follows:

Gregory C. Melucci, Esq.
Attorney for Norwin Area School District
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Date: 5/26/2006

/s/ Charles W. Jelley
Charles W. Jelley, Esq.
Attorney for Plaintiffs